

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY E. KIBLER,

Plaintiff,

v.

WORLD FINANCIAL NETWORK  
NATIONAL BANK,

Defendant.

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CIVIL ACTION NO. 02-CV-3010

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Defendant World Financial Network National Bank's Motion For Leave to File a Reply Brief in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), and any response thereto, it is hereby ORDERED that leave is GRANTED and the Reply Brief is accepted by the Court.

IT IS FURTHER ORDERED that the Clerk shall accept defendant's Reply Brief for filing.

BY THE COURT:

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The Honorable Timothy J. Savage

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY E. KIBLER,

Plaintiff,

v.

WORLD FINANCIAL NETWORK  
NATIONAL BANK,

Defendant.

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CIVIL ACTION NO. 02-CV-3010

**DEFENDANT WORLD FINANCIAL NETWORK NATIONAL  
BANK'S MOTION FOR LEAVE TO FILE A REPLY BRIEF IN  
SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S  
AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant World Financial Network National Bank ("World Financial"), by and through its undersigned counsel, hereby moves for leave to file a reply brief in support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), which is attached hereto as Exhibit "A", and in support thereof states as follows:

1. On September 27, 2002, World Financial moved to dismiss plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6).
2. On October 15, 2002, plaintiff filed Plaintiff's Response to Defendant's Motion to Dismiss.
3. This Court should grant defendant leave to file the attached reply brief for three principal reasons.
4. First, plaintiff fails to address several arguments raised in defendant's motion to dismiss, and makes several concessions which require that this Court dismiss plaintiff's complaint.

5. Second, in his response plaintiff states his negligence claim is a claim for “negligence per se” for allegedly violating provisions of the Gramm Leach Bliley Act, 15 U.S.C.A. 6801, et. seq. This statute, however, was not in effect during the time period that plaintiff alleges the wrongful conduct for which he has brought this lawsuit occurred.

6. Third, plaintiff cites several cases which are not applicable to the claims in plaintiffs’ complaint.

WHEREFORE, World Financial respectfully requests that this Court grant defendant’s motion for leave to file a reply brief in support of defendant’s motion to dismiss plaintiff’s amended complaint pursuant to Fed. R. Civ. P. 12(b)(6), and enter an order in the form attached hereto.

Respectfully submitted,

Of Counsel:

AKIN, GUMP, STRAUSS,  
HAUER & FELD, L.L.P.

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David L. Comerford  
Jeffery A. Dailey  
Attorney I.D. Nos. 65969 and 85993  
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Attorneys for Defendant World Financial  
Network National Bank

Dated: October 23, 2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFREY E. KIBLER,

Plaintiff,

v.

WORLD FINANCIAL NETWORK  
NATIONAL BANK,

Defendant.

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CIVIL ACTION NO. 02-CV-3010

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT WORLD FINANCIAL  
NETWORK NATIONAL BANK'S MOTION FOR LEAVE TO FILE A REPLY BRIEF  
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S  
AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

On September 27, 2002, World Financial moved to dismiss plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff filed Plaintiff's Response to Defendant's Motion to Dismiss on October 15, 2002.

This Court should grant defendant leave to file the attached reply brief for three principal reasons. First, plaintiff fails to address several arguments raised in defendant's motion to dismiss, and indeed makes several concessions which require that this Court dismiss plaintiff's complaint.

Second, in his response plaintiff states his negligence claim is a clam for "negligence per se" for allegedly violating provisions of the Gramm Leach Bliley Act, 15 U.S.C.A. 6801, et. seq. This statute, however, was not in effect during the time period that plaintiff alleges the wrongful conduct for which he has brought this lawsuit occurred. Defendant had no notice that this was the basis of plaintiff's negligence claim and therefore could not, and did not address this claim in its motion to dismiss.

Third, plaintiff cites several cases which are not applicable to the claims in plaintiffs' complaint.

Local Rule 7.1(c) provides that "[t]he Court may require or permit further briefs if appropriate." Local Civ. Rule 7.1(c).

World Financial respectfully requests that this Court grant defendant's motion for leave to file a reply brief in support of defendant's motion to dismiss plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6), and enter an order in the form attached hereto.

Respectfully submitted,

Of Counsel:

AKIN, GUMP, STRAUSS,  
HAUER & FELD, L.L.P.

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Attorneys for Defendant World Financial  
Network National Bank

Dated: October 23, 2002

**CERTIFICATE OF SERVICE**

I, Jeffery A. Dailey, hereby certify that on the 23<sup>rd</sup> day of October, 2002, I served a true and correct copy of Defendant World Financial Network National Bank's Motion For Leave to File a Reply Brief in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), Memorandum of Law in support thereof, and World Financial Network National Bank's Reply Brief in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), upon the following:

**VIA FIRST CLASS MAIL**

Edwin L. Stock, Esquire  
John E. Muir, Esquire  
James M. Smith, Esquire  
Roland & Schlegel, P.C.  
627 North Fourth Street  
P.O. Box 902  
Reading, PA 19603-0902

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Jeffery A. Dailey